

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
BIG STONE GAP DIVISION**

**UNITED STATES OF AMERICA**

V.

**ROY LEE DYKES,**

Defendant.

[illegible]

Case No. 2:18CR00003-001

## ORDER

By: James P. Jones  
United States District Judge

The defendant was convicted by a jury verdict returned September 20, 2019. On January 10, 2020, prior to his sentencing, he filed a pro se Motion for new trial based on alleged newly discovered evidence. ECF No. 668. He was sentenced on January 15, 2020. At that time, the court announced orally that the pro se Motion for New Trial was denied, with a written order to follow. ECF No. 674. The defendant's counsel filed a timely notice of appeal from the final judgment on January 23, 2020. ECF No. 679. On March 10, 2020, the court entered an Opinion and Order setting forth the grounds for the denial of the motion. ECF No. 731. The defendant filed a pro se Notice of Appeal from the March 10 Opinion and Order which was received by this court and filed April 6, 2020. ECF No. 753. The Notice of Appeal recited that it had been placed in the prison mail on April 2, 2020.

The court of appeals thereafter remanded the appeal to this court for the limited purpose of determining whether the defendant should be granted leave to file his pro se Notice of Appeal out of time based on good cause or excusable neglect. Order, Appeal No. 20-6467, ECF No. 761.

I invited counsel for the Appellant-Defendant and the Government to submit briefs on the issue, which have been filed. Appellant-Defendant urges the court to consider that good cause within the meaning of Federal Rule of Appellate Procedure 4(b)(4) allows out of time filing since Appellant-Defendant asserts that he did not receive in prison the March 10 Opinion and Order until April 1 and mailed the Notice of Appeal on the next day. Counsel notes that the Covid-19 health crisis has produced delays and even returns in otherwise proper mailings and counsel himself experienced difficulty in mailings to his client in March.

The Government does not contest that under the unique circumstances of this case, excusable neglect exists within the meaning of Rule 4(b)(4).

Accordingly, in answer to the remand by the court of appeals, and for the reasons as stated on behalf of Appellant-Defendant, I find that Roy Lee Dykes should be granted leave to file his April 6, 2020 Notice of Appeal out of time based on good cause.

It is so **ORDERED**.

The Clerk shall provide a copy of this Order to the Clerk of the United States Court of Appeals for the Fourth Circuit, Case No. 20-6467, and to Charles Michael Henter, HenterLaw, PLC, 609 East High Street, Charlottesville, Virginia 22902.

ENTER: May 28, 2020

/s/ James P. Jones  
United States District Judge